



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 26, 2004

Ms. Claudia G. Arrieta  
Thornton, Summers, Biechlin, Dunham & Brown, L.C.  
Airport Center - Suite 300  
10100 Reunion Place  
San Antonio, Texas 78216-4186

OR2004-2317

Dear Ms. Arrieta:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198222.

The Frio County Sheriff's Department (the "department") received a request for personnel records from a specified period, certain cellular telephone records, information relating to persons and companies authorized to execute bail bonds during specified years, and certain dispatch records. The only information you have submitted to this office consists of police dispatch logs. You claim some requested information is excepted from disclosure under sections 552.101, 552.102, and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing for submission of public comments).

Initially, we address the department's obligations under the Act. Section 552.301(a) of the Government Code requires that a governmental body that receives a written request for information that it wishes to withhold and for which there has not been a previous determination to request a ruling from this office. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the requested information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply

to which parts of the documents. You inform us that the department received this request on November 25, 2003. However, you did not request a ruling from this office until January 22, 2004, well after the expiration of the ten-day deadline. Furthermore, as noted above, the only information you have submitted to this office consists of dispatch logs, which you do not contend are excepted from disclosure and which you did not submit until January 27, 2004. As of the date of this ruling, you have not submitted to this office copies or representative samples of any of the remaining requested information, which you do claim is excepted from disclosure. Consequently, you have failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

Section 552.103 of the Government Code is a discretionary exception that protect a governmental body's interests and may be waived. As such, it does not constitute a compelling reason to withhold information. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, none of the requested information may be withheld on this basis. On the other hand, sections 552.101 and 552.102 of the Government Code are designed to protect information that is confidential by law or involves individuals' privacy interests and can provide compelling reasons for withholding information. However, as you have not submitted most of the requested information, or a representative sample, for our review, we have no basis for finding it confidential. Thus, we have no choice but to order you to release any requested information that you did not submit to this office. If you believe such information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

We turn now to the submitted dispatch logs, which you do not contend are excepted from disclosure. We note that these logs include information that appears to relate to motor vehicle records. Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." By its terms, section 552.130 excepts from disclosure only information pertaining to motor vehicle records issued by this state. Accordingly, pursuant to

section 552.130, the department must withhold the information that we have marked in the dispatch logs only to the extent that it reflects Texas-issued motor vehicle records. To the extent it does not pertain to motor vehicle records or pertains to records issued by other states, it must be released.

In summary, Texas-issued motor vehicle record information must be withheld under section 552.130. The remaining requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

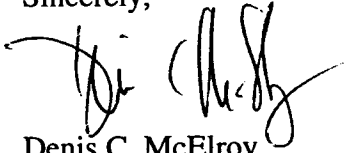
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "D. C. McElroy", written over a horizontal line.

Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 198222

Enc. Submitted documents

c: Mr. Robert Herrera, Jr.  
8519 Chimney Hill  
San Antonio, Texas 78254  
(w/o enclosures)